

1 NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
2 COUNTY OF BEAUFORT SUPERIOR COURT DIVISION
FILE NO. 14 CVS 697

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4 TOWN OF BELHAVEN,
NORTH CAROLINA, et al.,
Plaintiffs

5 VS.

T R A N S C R I P T

6 PANTEGO CREEK, LLC,
7 et al.,
Defendants
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10 Transcript of motions hearing taken in the
11 General Court of Justice, Superior Court Division,
12 Washington County, North Carolina, at the
13 August 25, 2014 Criminal Session before the
14 Honorable Milton F. Fitch, Jr., Judge Presiding.

15 APPEARANCES

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North Carolina and Pungo District Hospital
22 Community Board

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(Appearances Continued)

1 APPEARANCES

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1 THE COURT: All right. I'm going to recess
2 your criminal calendar, sir.

3 Parties to the civil matter out of Beaufort County
4 can now assume the counsel tables.

5 MR. WILLIAMS: Just one second, Your Honor.
6 I'll get all of this stuff out of their way.

7 THE COURT: Just close it down. They're not
8 going to need all of that room.

9 Move your bucket and just slide your computer out of
10 the way.

11 Come right on, please, gentlemen.

12 MR. McSHURLY: May I approach, Your Honor?

13 This is an amended complaint.

14 THE COURT: This is what now?

15 MR. McSHURLY: The amended complaint we
16 filed in Beaufort this morning.

17 THE COURT: All right. Let the Record
18 reflect that before the Court at this time is 14 CVS 697
19 out of Beaufort County. The style of the case is
20 Town of Belhaven, North Carolina, North Carolina NAACP,
21 and Pungo District Hospital Community Board, plaintiff,
22 versus Universal -- University Health Systems of Eastern
23 North Carolina, Inc., doing business as Vidant Health,
24 and Pungo Creek, LLC.

25 If the parties will identify themselves for the

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1 benefit of the Record.

2 MR. McSHURLY: I'm Al McShurly from
3 Orange County. I represent the North Carolina NAACP.

4 MR. TATE: I'm John Tate. I'm from
5 Beaufort County, and I represent the Town of Belhaven
6 and the -- I'm sorry -- and the committee -- the
7 hospital committee -- community board -- excuse me --
8 Pungo District Hospital Community Board.

9 THE COURT: All right.

10 MR. GRADY: Judge, good morning.

11 Arey Grady, Craven County bar, I represent
12 Pantego Creek, LLC. I'm joined by my colleague
13 Scott Hart.

14 MR. HART: Good morning, Your Honor.

15 MR. QUALLS: And, Your Honor, Gary Qualls
16 from the Durham County bar, representing Vidant Health.

17 THE COURT: And one is missing.

18 The other is missing from your side; is that right?

19 MR. QUALLS: Your Honor, my partner from the
20 prior TRO hearing is not here today.

21 THE COURT: All right.

22 All right. The purpose of being here today is that
23 ten days ago in Wilson County this matter appeared
24 before this Court on an application for a TRO which was
25 granted, and the matter was set for the hearing of the

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1 preliminary injunction for today here.

2 The High Clerk from Beaufort County is present in the
3 courtroom having in his possession a duplicate file in
4 this matter which duplicate file does not contain the
5 TRO.

6 MR. TATE: It doesn't contain the TRO?

7 I certainly delivered the TRO as requested by the
8 Court.

9 THE COURT: Check to see, Sir Clerk. I
10 don't see it unless I overlooked it.

11 Maybe I need to take the fasteners off and see what's
12 underneath what they filed this morning.

13 Does anybody have an extra copy of that TRO that you
14 would let me borrow?

15 MR. HART: May I approach?

16 THE COURT: Yes, sir.

17 It was in there out of order.

18 MR. TATE: Whoa.

19 THE COURT: All right. Thank you.

20 It's out of order. That's what we get when we get a
21 duplicate file.

22 All right. Parties may proceed.

23 MR. HART: Your Honor.

24 THE COURT: Yes.

25 MR. HART: A moment with the Court prior to

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1 the motion, on August 19, last Tuesday, the defendants
2 in this matter filed a notice of removal of this case to
3 federal court --

4 THE COURT: All right.

5 MR. HART: -- federal causes of action in
6 it. There were some indications at least on Friday of
7 last week via e-mail counsel for the plaintiff --
8 plaintiffs were served via regular mail on the 18th --

9 THE COURT: All right.

10 MR. HART: -- contacted the clerk's office
11 in Beaufort County on Friday and was told via telephone
12 that the removal notice had been received by the clerk
13 in Beaufort County --

14 THE COURT: All right.

15 MR. HART: -- and so under the terms of
16 Rule 12 as well as the federal rules it's the position
17 of the defendant that upon the notice of that removal
18 being filed that this matter is now pending in federal
19 court before Judge Dever.

20 THE COURT: I think you're absolutely
21 correct.

22 MR. McSHURLY: Your Honor, may I be heard?

23 THE COURT: Yes, sir.

24 MR. McSHURLY: The notice of -- the federal
25 procedure which I know -- 1446 which I have a copy of of

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1 what they're supposed to do to remove it -- may I
2 approach, Your Honor?

3 THE COURT: Yes.

4 MR. McSHURLY: Notice that was filed in --
5 in Beaufort Superior Court the clerk's -- which we got
6 from -- my partner here got it from the clerk's office
7 there on Friday, had no attachments to it.

8 If you will see, the procedure for removal -- this is
9 on the grounds, as you're familiar with, Judge Fitch,
10 that somehow our initial complaint which we amended had
11 some kind of federal action in it, and, therefore, the
12 defendants believe that they would get a fair shake in
13 federal court if they moved it to federal court rather
14 than leave it here.

15 Number one, we object to their position that they
16 have actually effectuated the removal because they
17 failed to -- if you'll see the underline in 1446(a),
18 together with a copy of all process, pleadings, and
19 orders served upon such defendant or defendants in such
20 action. They did not file a copy of the complaint or
21 any of the pleadings including your TRO with the federal
22 court or with the Beaufort County Court, so that removal
23 has not been effectuated in the proper manner.

24 We have also -- they also apparently misunderstood
25 because the only mention of any federal issue in this

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1 case was the fact that the NAACP had filed a Title VI
2 which, of course, is a federal complaint to the office
3 of health and human services up in D.C. which got
4 referred to Atlanta, and that complaint is moving along.
5 This has nothing to do with that complaint. That
6 complaint is in Atlanta. They -- Atlanta office of
7 civil rights has been sent out interrogatories, has been
8 in touch with both of these defendants and asked them to
9 respond to that complaint. That complaint has nothing
10 to do with this -- asking this Court to step in in a
11 state action under unfair trade practices, civil rights,
12 and we've added a third claim today of reverter action
13 which we ask you to hear.

14 Secondly, the civil rights complaint which in the
15 first complaint did say the civil rights claim and the
16 first complaint did say that there -- there had been a
17 Title VI claim filed, and I'm assuming that's the hook
18 they want to hang this on to get it into federal court,
19 to get it out of your court. If you will read the
20 original complaint and you'll read our amended complaint
21 which is before you today -- where's a copy?

22 You will see that this -- this is the claim --
23 complaint I brought up to you, Judge. On page two, this
24 is a claim that comes directly under North Carolina
25 General Statute 99D-1. You're very familiar with that,

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1 and I'll -- if I may approach, I'll show you the essence
2 of this civil rights complaint. It has absolutely
3 nothing to do with the feds. There's no federal
4 jurisdiction over 99D-1.

5 As you may recall, Judge, this was passed in 1987
6 after a series of -- of accidents, some out here in the
7 east, and the General Assembly in its wisdom decided
8 that the -- the state needed a statutory method of
9 dealing with possible conspiracies to violate people's
10 civil rights. It's called civil rights, and it's called
11 interference with civil rights, 99D-1, and we have pled
12 this in more detail at this -- in our second amended
13 complaint. Take a moment to read that, and you read our
14 compliant, this has nothing to do with any federal
15 action; of course, the first ten days ago when we met in
16 Wilson, that had nothing to do with any federal action
17 too, so it's a very, very slim reed that they're
18 standing on.

19 We, of course, believe that the federal claim of the
20 NAACP, not of the Town, is a viable claim under
21 Title VI. There's no litigation under Title VI as you
22 know directly. I know you recall how Title VI was used
23 to segregate the schools, and this is totally separate
24 and apart from that, and I know I -- I'm arguing -- I
25 would make the same argument to the federal court if

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1 they possibly want to hear it, but I want you to know
2 that right now this -- this notice of removal has been
3 -- not filed as per the rule. That's number one and,
4 number two, has no merit, no standing at all --

5 THE COURT: What says you as to the
6 assertion that the statute has not been filed -- the
7 removal has not been proper under --

8 MR. GRADY: Judge, if I may approach, we
9 have a copy of what we filed with the federal court. It
10 is a detailed notice of removal, attached is the
11 exhibits. We have a copy of the complaint as actually
12 filed during the TRO hearing two weeks ago in Wilson.
13 It contains the exhibits that were attached to the
14 complaint, and, Your Honor, it contains a copy of the
15 temporary restraining order you entered.

16 May I approach and tender this?

17 THE COURT: Yes.

18 MR. GRADY: Your Honor, even if for some
19 reason there is an arguable procedural or other claim
20 that this case should not be in federal court, as
21 Your Honor is well aware, that's a matter for the
22 federal court to decide. Rule 12 essentially says once
23 the petition is filed, the state court will have no
24 further proceedings on the matter. Plaintiffs can
25 address any arguments they have as to the sufficiency of

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1 the process or to the federal court's jurisdiction to
2 the federal court, and the federal court can absolutely
3 remand it to this court, Your Honor.

4 THE COURT: I think you're correct in
5 procedure. Notice is sufficient, the paperwork has been
6 done; thus, this Court is divested of responsibility in
7 it.

8 The process, as I understand removal, is that now
9 that the paperwork has been filed, the federal court has
10 a decision to make as to whether or not it actually
11 accepts the matter. If it doesn't accept the matter,
12 then the matter comes back. The only thing that leads
13 us to at this time is what is the status of the
14 restraint at this time.

15 It's my understanding that the restraint is in place
16 until another court overturns that restraint. Now the
17 restraint was for ten days, and the ten days expires
18 today. I guess by way of dictum or otherwise the
19 parties who are the defendants should understand that
20 this Court will not -- should it not be accepted by the
21 federal court, this Court will not look friendly on the
22 fact that you go around and use this as a technical way
23 to just usurp this Court's authority by doing those
24 things that we've asked you not to do during the
25 pendency of the ten days.

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1 If the federal court grabs the case, then so be it.
2 If the federal court does not grab the case, then we're
3 back to where we are. The status quo was intended to be
4 kept, and the status quo shall be kept until this matter
5 lands one place or the other.

6 All parties understand?

7 (Gestures made.)

8 MR. GRADY: Yes, sir.

9 MR. HART: Yes, sir.

10 THE COURT: I don't understand the nod of a
11 head.

12 MR. GRADY: Yes, sir. We understand what
13 you're talking about.

14 THE COURT: I need you to put it on the
15 Record that you understand where we are. If that's the
16 way we leave here, then nobody is harmed one way or
17 another.

18 Don't sell, don't do, don't remove, don't do any of
19 those things that you were restrained from doing until
20 the federal court tells you yea or nay. If we move from
21 this point with that understanding, then I don't see
22 anything else for me to do in this matter.

23 MR. GRADY: Yes, sir.

24 THE COURT: All right.

25 MR. HART: Thank you, Your Honor.

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1 MR. TATE: Thank you very much, Your Honor.

2 MR. GRADY: Your Honor, would you like for
3 me to retrieve that paperwork?

4 THE COURT: I'm going to give it back to
5 you.

6 MR. McSHURLY: We would love to see one too,
7 Your Honor, since we've not been served.

8 MR. GRADY: You were served by mail and --

9 THE COURT: Well, I don't want to get into
10 all of that. Y'all can have those conversations
11 elsewhere outside the presence of this Court.

12 MR. GRADY: Thank you, Your Honor.

13 MR. QUALLS: Thank you.

14 THE COURT: Court will take a fifteen
15 minutes recess.

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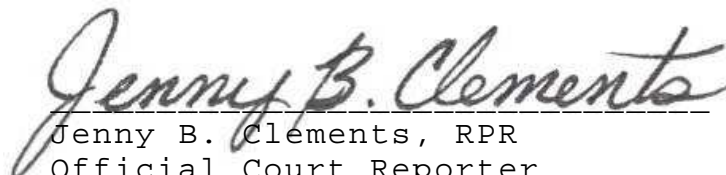
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END OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken at the August 25, 2014 Session of Criminal Superior Court is a true and accurate transcription to the best of my ability and understanding of the proceedings taken by me in machine shorthand and transcribed by me personally.

This the 2nd day of September 2014.


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STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBERS: 14 CVS 697

TOWN OF BELHAVEN,
NORTH CAROLINA, et al.,
Plaintiffs

VS.

CERTIFICATE OF DELIVERY

PANTEGO CREEK, LLC,
et al.,
Defendants

This is to certify that the transcript in the
above-entitled case, pages 1 through 14, was ordered of
Jenny Clements on the 29th of August 2014 and was electronically
delivered to Ms. Carolyn Hall, carolyn.hall@klgates.com
on the 2nd day of September 2014.


Jenny Clements, RPR
Official Court Reporter